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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 354th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 16 November 1998, at 10 a.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Yugoslavia (continued)

Third periodic report of the United Kingdom of Great Britain and Northern Ireland and dependent territories

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.354/Add.1.

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Yugoslavia (continued) (CAT/C/16/Add.7)

Conclusions and recommendations of the Committee

1. The CHAIRMAN, noting that the representative of Yugoslavia was unable to attend the meeting, invited the Country Rapporteur to read out the conclusions and recommendations adopted by the Committee concerning the initial report of Yugoslavia.

Mr. YAKOVLEV (Country Rapporteur) read out the following text:

"1. The Committee considered the initial report of Yugoslavia (CAT/C/16/Add.7) at its 348th, 349th and 354th meetings, held on 11 and 16 November 1998 (CAT/C/SR.348, 349 and 354) and adopted the following conclusions and recommendations:

A. Introduction

2. Yugoslavia signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 18 April 1989 and ratified it on 20 June 1991. It recognized the competence of the Committee against Torture to receive and consider communications under articles 21 and 22 of the Convention.

3. The initial report of Yugoslavia was due in 1992. The Committee expresses concern over the fact that the report was submitted on 20 January 1998 only. The report contains background information, information on international instruments, on competent authorities, on court and police procedures, and information concerning the compliance with articles 2-16 of the Convention.

B. Positive aspects

4. As a positive aspect, it can be mentioned that the provisions of article 25 of the Constitution of the Federal Republic of Yugoslavia forbid all violence against a person deprived of liberty, any extortion of a confession or statement. This article proclaims that no one may be subjected to torture, degrading treatment or punishment. The same norm is contained in the Constitutions of the constituent republics of Serbia and Montenegro.

5. The Criminal Code of Yugoslavia defines the punishable offences of unlawful deprivation of freedom, extortion of depositions and maltreatment in the discharge of office. Similar provisions are contained in the Criminal Codes of Serbia and of Montenegro. The Law on Criminal Procedure applicable throughout the Federal Republic of Yugoslavia contains a provision according to which any extortion of a confession or statement from an accused person or any other person

involved in the proceedings is forbidden and punishable. This Code also provides that during detention neither the personality nor the dignity of an accused may be offended.

6. The police regulations in Yugoslavia provide disciplinary and other measures, including termination of employment and criminal charges in cases of acts by police officers violating the provisions of the Convention.

7. The current legislative reform in the area of criminal law, and especially criminal procedure, envisions specific provisions which will, hopefully, contribute to the improved prevention of torture in Yugoslavia.

C. Factors and difficulties impeding the application of the provisions of the Convention

8. The Committee took into account the situation in which Yugoslavia currently finds itself, especially with respect to the unrest and ethnic friction in the province of Kosovo. However, the Committee emphasizes that no exceptional circumstances can ever provide a justification for failure to comply with the terms of the Convention.

D. Subjects of concern

9. The Committee's concerns relate mainly to legislation not complying with the Convention and, more gravely, the situation regarding the implementation in practice of the Convention.

10. With respect to legislation, the Committee is concerned over the absence in the criminal law of Yugoslavia of a provision defining torture as a specific crime in accordance with article 1 of the Convention. The incorporation of the definition contained in article 1 of the Convention, in compliance with article 4, paragraph 1, and article 2, paragraph 1, requires specific as well as systematic legislative treatment in the area of substantive criminal law. Article 4 of the Convention demands that each State party shall ensure that all acts of torture are offences under its own criminal law. A verbatim incorporation of this definition into the Yugoslav Criminal Code would permit the current Yugoslav criminal code formula defining the 'extortion of confession' to be made more precise, clear and effective.

11. One of the essential means in preventing torture is the existence, in procedural legislation, of detailed provisions on the inadmissibility of unlawfully obtained confessions and other tainted evidence. In this respect, the report of the State party (para. 70) only mentions the 'general principles' of national criminal legislation. However, the absence of detailed procedural norms pertaining to the exclusion of tainted evidence can diminish the practical applicability of these general principles as well as of other relevant norms of the Law on Criminal Procedure. Evidence obtained in violation of article 1 of

the Convention should never be permitted to reach the cognizance of the judges deciding the case, in any legal procedure.

12. Regulating pre-trial detention is of specific significance for the prevention of torture. Two issues are crucial in this respect, namely incommunicado detention and access to counsel. Article 23 of the Constitution of Yugoslavia requires that the detained person should have prompt access to counsel. This would imply that such access to counsel must be made possible immediately after the arrest. However, article 196 of the Law on Criminal Procedure permits the police to keep a person, in specific instances, in detention for a 72-hour period, without access either to counsel or an investigating judge. The report does not mention the duration of the post-indictment pre-trial detention, which should not be unduly extended.

13. With respect to the factual situation in Yugoslavia, the Committee is extremely concerned over the numerous accounts of the use of torture by the State police forces that it has received from non-governmental organizations. Reliable data received by the Committee from non-governmental organizations include information describing numerous instances of brutality and torture by the police, particularly in the districts of Kosovo and Sandzack. The acts of torture perpetrated by the police, and especially by its special units, include beatings by fists, beatings by wooden or metallic clubs mainly on the head, on the kidney area and on the soles of the feet, resulting in mutilations and even death in some cases. There were instances of use of electroshock. The concern of the Committee derives also from reliable information that confessions obtained by torture were admitted as evidence by the courts even in cases where the use of torture had been confirmed by pre-trial medical examinations.

14. The Committee is also gravely concerned over the lack of sufficient investigation, prosecution and punishment by the competent authorities (article 12 of the Convention) of suspected torturers or those breaching article 16 of the Convention, as well as with the insufficient reaction to the complaints of such abused persons, resulting in the de facto impunity of the perpetrators of acts of torture. De jure impunity of the perpetrators of torture and other cruel, inhuman or degrading treatment or punishment results inter alia from amnesties, suspended sentences and reinstatement of discharged officers that have been granted by the authorities. Neither the report nor the oral statement of the Yugoslav delegation said anything about the Yugoslav Government's efforts concerning the rehabilitation of the torture victims, the amount of compensation they receive and the actual extent of redress afforded them.

15. The Committee hopes that in the future it will be possible to bridge the disconcerting discrepancy between the Yugoslav report and the apparent reality of abuse. However, the Committee is also concerned with the apparent lack of political will on the part of the State party to comply with its obligations under the Convention.

E. Recommendations

16. The Committee calls upon the State party to fulfil the legal, political and moral obligations it undertook when it ratified the Convention. The Committee expects the second periodic report of Yugoslavia, already overdue, to address allegations of torture under Yugoslav jurisdiction and respond directly to them. The Committee expects, in particular, that the State party provide information concerning all specific allegations of torture handed to its representatives during the dialogue with the Committee. In compliance with articles 10, 12, 13 and 14 of the Convention, the Committee would appreciate information on all the educational efforts that the Yugoslav Government intends to undertake with a view to preventing torture and breaches of article 16 of the Convention. In addition, the Committee would appreciate receiving information on legislative and practical measures the State party intends to undertake in order to provide victims of torture with appropriate redress, compensation and rehabilitation.

17. The Committee recommends the verbatim incorporation of the crime of torture into the Yugoslav criminal codes. In order to diminish the recurrence of torture in Yugoslavia, the Committee recommends that the State party legally and practically ensure the independence of the judiciary, the unrestricted access to counsel immediately after arrest, shortening of the length of police custody to a maximum period of 48 hours, shortening of the period of pre-trial post-indictment detention, strict exclusion of all evidence directly or indirectly derived from torture, effective civil redress and a vigorous criminal prosecution in all cases of torture and breaches of article 16 of the Convention.

18. The Committee finally calls upon the State party to submit its second periodic report by 30 November 1999."

The meeting was suspended at 10.20 a.m. and resumed at 10.30 a.m.

Third periodic report of the United Kingdom of Great Britain and Northern Ireland and dependent territories (CAT/C/44/Add.1; HRI/CORE/1/Add.62 and HRI/CORE/1/Add.5/Rev.2)

2. At the invitation of the Chairman, Mr. Pearson, Mr. Steel, Mr. Carter, Mr. Harbin, Ms. Menaud-Lissenburg, Mr. Beeton, Ms. Todd, Mr. Rogers and Mr. Miller (United Kingdom of Great Britain and Northern Ireland) took places at the Committee table.

3. The CHAIRMAN invited the delegation to introduce the third periodic report of the United Kingdom (CAT/C/44/Add.1).

4. Mr. PEARSON (United Kingdom) said that the third report was a factual account of developments since the consideration of the second report in November 1995 and also of some significant developments since the third report itself had been submitted earlier in the year.

5. The report mentioned that the Government had introduced a bill to give effect to the European Convention on Human Rights. He was pleased to say that the Human Rights Act had received Royal Assent on 9 November. A copy of the Act would be circulated to members of the Committee. One major difference between the copy of the Human Rights Bill sent to the Committee with the United Kingdom's third report and the Act was the addition to the Act of Protocol No. 6 to the European Convention on Human Rights. Parliament had taken that decision in May 1998, thereby confirming the abolition of the death penalty for all civil offences. The Government had subsequently announced that it would abolish the death penalty for military offences in peace and wartime. Arrangements were currently being made to ratify Protocol No. 6.

6. The Human Rights Act was a key piece of legislation in the Government's comprehensive programme of constitutional reform. Under the Act, people who believed that a public authority had breached their rights under the Convention could bring proceedings in the domestic courts rather than have to take their case to Strasbourg. If a court found in their favour, it would be able to award whatever remedy was open to it, including damages.

7. Courts would have to interpret legislation so that it was compatible with Convention rights. Where secondary legislation was not compatible, the courts would generally be able to strike it down. In addition, a Government Minister would in future have to make a statement about whether new government legislation was compatible with the Convention, something designed to enhance the scrutiny of the human rights aspects of legislation when it was being prepared. The Act would help strengthen the human rights culture in the United Kingdom. Convention rights would permeate the governmental and legal system at all levels and it was expected that the impact would in time be considerable. The Government had not yet decided when the Act would come into force, as there was a great deal of preparatory work to be done. For example, all courts and tribunals would need training to deal confidently with Convention points in the cases that came before them.

8. In practice, it would have an effect in Scotland, Wales and Northern Ireland first. Under the terms of the Government's devolution legislation, the devolved institutions in those parts of the United Kingdom - for example the Scottish Parliament and Executive and the Northern Ireland Assembly - would not have power to do anything incompatible with the Convention. The devolved administrations would start operating in the summer of 1999.

9. Events in Northern Ireland had been moving at a very fast pace in recent months. The Human Rights Bill would apply there and Convention rights would be available to the people. However, the particular circumstances in Northern Ireland justified special measures to protect the rights conferred by the Human Rights Bill, with the possibility of creating additional rights unique to Northern Ireland.

10. Rights, safeguards and equality of opportunity had formed a central theme in the Agreement signed in Belfast on Good Friday 1998. In addition to establishing a devolved Assembly, the Agreement had also sought to make provision for a new body, to be called the Northern Ireland Human Rights Commission. Its role was to include keeping under review the adequacy and

effectiveness of laws and practice, making recommendations to the Government as necessary; providing information on and promoting awareness of human rights; considering draft legislation referred to it by the new Assembly; and, in appropriate cases, bringing court proceedings or affording assistance to persons doing so. The Commission would also offer advice on the scope for creating a new "Bill of Rights" for Northern Ireland.

11. The Good Friday Agreement called for an independent commission on policing in Northern Ireland, to be chaired by the Right Honourable Chris Patten, and a parallel wide-ranging review of criminal justice led by the Government, but with a strong independent element. The Agreement required the submission of the Patten report by the summer of 1999 and the criminal justice review by the autumn of 1999. Both were on course in order to meet those deadlines.

12. Historically, Northern Ireland was a divided society and the basis of that division went back a long way. The Agreement had recognized the legitimate aspirations of both traditions, so as to ensure rigorous impartiality on behalf of all the people in the diversity of their identities and traditions, to be founded on the principles of full respect for and equality of civil, political, social and cultural rights, freedom from discrimination for all citizens and parity of esteem and just and equal treatment for the identity, ethos and aspirations of both communities.

13. There had also been developments in some of the issues relating to the Committee's recommendations, which were discussed in the introduction to the third report. The Government had not yet published its consultation paper on the permanent United Kingdom-wide counter-terrorism legislation referred to in paragraph 10 (a) of the report, but should do so shortly. The issues to be considered were complex and the paper would also discuss and invite views on the measures introduced in the new Criminal Justice (Terrorism and Conspiracy) Act 1998, submitted after the Omagh bombing on 15 August which had claimed the lives of 29 people.

14. The Special Immigration Appeals Commission Act (para. 10 (c)) had come into effect in August 1998, and the Commission was expected to hear its first cases within the next few months. The Northern Ireland (Emergency Provisions) Act 1998 made provision for the audio-recording of police interviews with terrorist suspects (para. 10 (f)). Silent video-recording of police interviews with terrorist suspects had become mandatory on 10 March 1998, although the police had been using the system administratively since January.

15. The report also covered efforts to reduce prison overcrowding. Short-term prison population projections gave a more optimistic view of the opportunities for lowering overcrowding levels, keeping prisoners closer to their homes and improving constructive regimes. Beyond the next two years, the rate of increase was expected to ease off, but experience had shown that there was great uncertainty in such projections. The matter would be kept under close scrutiny.

16. The Committee had no doubt been watching with interest the recent developments relating to Senator Pinochet. The House of Lords had finished hearing submissions, but had not yet reached a judgement on the issues concerning his arrest.

17. He would attempt to reply to any questions on the reports of the Crown dependencies and would pass on comments to the Insular Authorities. It was worth noting that, following the Human Rights Act, all three islands, Guernsey, Jersey and the Isle of Man, were committed to introducing legislation on the European Convention on Human Rights, and they were aiming to submit draft laws to the Home Office by the end of the year.

18. Mr. STEEL (United Kingdom), introducing Part Three of the third periodic report, on the dependent territories overseas, said that the laws and practices of all the territories were in substantial conformity with the Convention. Where problems or deficiencies existed, the report drew attention to them and explained what was being done to tackle them.

19. In particular, the delegation could again confirm, as it had done on both previous occasions, that there had been no cases to date in any territory in which anyone had been accused of torture or any equivalent offence. Furthermore, no territory had received a request from any country to extradite a person to answer to a charge of torture, and no one had been expelled or returned from any territory to another country in circumstances where there had been any reason to think that that might have led to his being exposed to torture.

20. There had been a number of more recent developments. First, the comprehensive review of the Government's relations with its overseas territories (paras. 163-167) was well under way. A White Paper setting out the position in greater detail, to be published in the near future, was unlikely to alter the position as already reported to the Committee.

21. There had been a slight delay in meeting the timetable for completing the process of updating the extradition legislation (paras. 165-167). The draft of the Order in Council to tidy up the provisions regulating "intra-Commonwealth" extradition, i.e. from one overseas territory to another or from an overseas territory to the United Kingdom itself, another Commonwealth territory or the Republic of Ireland, had not yet been finalized, but his Government hoped that it would be by the end of 1998 or by very early 1999. As stated in the report, the Order would not alter the substance of existing law.

22. The Mental Health Bill referred to in paragraphs 170 and 171 was still before the Anguilla House of Assembly, which expected to move ahead with it in the near future. The bill to abolish corporal punishment (para. 174) had passed into law as the Abolition of Corporal Punishment Ordinance 1998. With regard to the use in police interviews of video and tape recordings in Bermuda (para. 177 (a)), the Code of Practice Tape Recording Order had been issued and would enter into force as soon as the police had installed the necessary equipment and facilities. Also, the Police Complaints Authority had begun operating on 5 October. Work on amendments to the legal aid system and better facilities for segregating young offenders was still under way.

23. In the British Virgin Islands, drafts of a Prison (Amendment) Act and new Prison Rules were currently awaiting submission to the territory's Executive Council for its approval. It was hoped that the new Rules would come into force in 1999. The Executive Council had recently approved a recommendation to establish a legal aid scheme and a memorandum of understanding between the Government of the territory and the British Virgin Islands Bar Association concerning the operation of the scheme was being drafted. Provision was made in the territory's 1999 budget for the operation of a limited legal aid service under the auspices of the Ministry of Health and Welfare.

24. With regard to the Cayman Islands, work on the revised Prison Rules had not yet been completed. However, the last references to judicial corporal punishment had been removed from the statute book by the Prisons (Amendment) Law 1998 which had been passed by the Legislative Assembly on 18 September 1998.

25. Corporal punishment in schools in the Falkland Islands, still lawful in the case of boys over 11 subject to their parents' consent, was currently the subject of an official examination.

26. Following the destruction of the prison at Plymouth, Montserrat, by the devastating volcanic eruption, a private dwelling had been used to accommodate prisoners. But as the number of remand prisoners had at times overtaxed the available facilities, the prison had been moved to three recently constructed buildings, which were far from ideal and not fully secure. However, the authorities were now in a position to segregate remand prisoners from convicted prisoners, and female prisoners from male prisoners. The construction of a new remand centre was due to be completed by March 1999. At the end of October 1998, there had been nine prisoners in Montserrat on remand, with an appeal outstanding or serving short sentences. Long-term Montserrat prisoners had been transferred to the Turks and Caicos Islands, the British Virgin Islands and the United Kingdom.

27. Mr. PEARSON (United Kingdom) assured the Committee that its comments would be reported to the British authorities and widely circulated.

28. The CHAIRMAN, speaking as Country Rapporteur, said that the layout of the United Kingdom report was very helpful, particularly the references, where appropriate, to action in response to the Committee's comments and recommendations following its consideration of the second periodic report.

29. The Committee was concerned about the continued existence of holding centres in Northern Ireland and particularly about conditions in Castlereagh Holding Centre, although it recognized that there had been a dramatic improvement. It urged the Government, especially in the light of recent favourable developments in Northern Ireland, to close the holding centres. Perhaps the time had come to replace them by the facilities available in ordinary police stations.

30. Noting the current policy of making silent video-recordings or audio-recordings of interviews with terrorist suspects, he asked why it was not possible to have a combination of the two. Could the reason be that with

silent video-recordings the police authorities were able to engage in such ambiguous behaviour as issuing threats while smiling at the suspect?

31. He understood that the current practice of holding a person for an initial period of 48 hours and subsequently, on application, for up to seven days without access to legal advice was inconsistent with the provisions of the European Convention on Human Rights. The Committee agreed with the European Commission on Human Rights that such practices were unsatisfactory in a democracy. They amounted, in his view, to a breach of article 16 of the Convention. The Committee was also very concerned to note that, under the recently enacted Criminal Justice (Terrorism and Conspiracy) Act 1998, which was held to be even more draconian than its predecessor, the burden of establishing that an apparent confession had been extorted by torture or ill-treatment was on the defendant. Moreover, contrary to the Committee's recommendation that an accused person should be given access to counsel of his or her choice no later than 48 hours after detention, the principle of choice had reportedly been ignored in the proposed new duty counsel system in detention centres. Regardless of the integrity of the panel of counsels, that omission detracted from the appearance of fairness and objectivity.

32. It was unclear from the report whether the Special Secure Units that segregated very dangerous prisoners had been abolished or retained under another name.

33. It was disturbing that women accused or suspected of terrorist activities, in particular Róisín McAlisky and Elaine Moore, had been held in all-male prisons. Ms. McAlisky had been four months' pregnant at the time. The Home Secretary had subsequently turned down an application for her extradition to Germany on humanitarian grounds. Would the delegation comment on those cases and on the prison facilities for high-risk female prisoners? He would also like further information on the status of the inquiry by Scottish police officers into allegations of ill-treatment of David Adams while in police custody in Northern Ireland.

34. A member of the Irish Republican Army (IRA), Diarmuid O'Neill, had been killed during a police raid in 1996. It later emerged that he had been unarmed at the time. In another case, a young Asian, Mr. Amer Rafiq, had sustained injuries during the course of an arrest which had led to the loss of one eye. What stage had been reached in the investigations into those cases?

35. Paragraphs 110 to 116 of the report contained figures for complaints considered by the Police Complaints Authority and the resulting disciplinary cases. The ratio of complaints to police disciplinary charges against police officers were 1.8, 1.3 and 1.7 per cent for the three years considered in England and Wales, 0.7, 3.8, 2.2 and 1.1 per cent for the four years considered in Northern Ireland and 24.5, 24.3 and 24.7 per cent for the three years considered in Scotland. He asked the delegation to comment on the disparity between the figures. Why was the ratio in Scotland so high? Did the Scottish authorities take such complaints more seriously or did they define the jurisdiction of the investigating authority in a different way? According to paragraph 116, the Independent Commission for Police Complaints in Northern Ireland supervised the investigation of cases where there were

allegations of serious injury. How was a serious injury defined, who decided whether an injury was serious and was the same benchmark applied in the rest of the United Kingdom?

36. There had been a marked improvement in the situation in the overseas dependencies, especially regarding corporal punishment, since the Committee had considered the second periodic report. However, the dependencies that retained judicial corporal punishment on their statute books should be urged to remove it.

37. It was admirable that Justice Tumim's experience as a former Chief Inspector of Prisons in England and Wales had been utilized to make recommendations regarding prison conditions in the Cayman Islands, many of which had been implemented. He also welcomed the review of the criminal justice system in Bermuda and the action that was being taken to implement the ensuing recommendations.

38. Was the death penalty retained in any of the Crown dependencies? Was he correct in assuming that corporal punishment was not part of the sanctions exercised in the Crown dependencies?

39. A request for the extradition of General Pinochet, former Head of State of Chile, had been made by the Spanish authorities. The request was based, inter alia, on allegations of crimes of torture committed during his period as Head of State. The judgement of the English High Court was analytically impeccable and the conclusion inevitable in the light of domestic legislation in the United Kingdom. It was based on two pieces of legislation, the 1989 Extradition Act and the 1978 State Immunity Act, pursuant to which a person who was charged with committing an offence outside England that was not directed against United Kingdom nationals and who had been a head of State at the time of committing the offence could not be extradited. How did the United Kingdom authorities reconcile the regime established by domestic legislation with their international treaty obligations, particularly articles 4 and 5 of the Convention? The United Kingdom operated a dualist system whereby an international treaty did not have force of law unless it was incorporated in domestic legislation. Had the whole of the Convention or only parts of it been incorporated in domestic legislation? He drew attention in particular to article 5, paragraph 2, which required States parties to take such measures as were necessary to establish jurisdiction over the offences referred to in article 4 in cases where the alleged offender was present in any territory under its jurisdiction and it had decided not to extradite him to another State. In the Committee's view, that paragraph conferred on States parties universal jurisdiction over torturers present in their territory, whether former heads of State or not, in cases where it was unable or unwilling to extradite them. Whether they decided to prosecute would depend on the evidence available, but they must at least exercise their jurisdiction to consider the possibility. The problem was that domestic legislation in the United Kingdom was in conflict with that obligation.

40. According to newspaper reports, one of the arguments used by General Pinochet's counsel was that if a head of State was in fear of future reprisals when travelling abroad, he would be hindered in the proper exercise of his sovereign authority. Counsel had cited Baroness Thatcher as an

example, submitting that she would have been unable to defend the Falklands Islands properly if she had feared subsequent extradition to Argentina. That argument was obviously absurd, because the conduct of the British Government during the Falklands conflict had not fallen into the category that the Committee would be concerned with. Equally, if the High Court position was carried to its logical conclusion, the United Kingdom would have had no jurisdiction to prosecute Adolf Hitler if he had visited England after the Second World War. The absolutist notion of sovereign immunity had been seriously undermined by State and international practice over the past 25 years. If domestic legislation in the United Kingdom made it impossible to prosecute or consider prosecuting former heads of State, it should be brought into conformity with the requirements of the Convention.

41. Mr. SØRENSEN congratulated the United Kingdom on its third periodic report (CAT/C/44/Add.1), and on the progress made since the submission of the initial report. In regard to asylum seekers, discussed in paragraphs 10 (c), 18 to 29 and 99, the Committee welcomed the Special Immigration Appeals Commission Act 1997 which met a concern the Committee had expressed during its consideration of the second periodic report. Equally gratifying was the news that the Human Rights Act would shortly come into force. Nonetheless, the way in which torture was dealt with in that legislation, based on the Universal Declaration of Human Rights, failed fully to meet the requirements of article 3 of the Convention. How, therefore, would compliance with article 3 be ensured in the consideration of asylum applications, at the time of both the initial application and the appeal? Would compliance be required under the new Human Rights Act? It appeared that the Dublin Convention also failed fully to reflect article 3, thereby raising questions regarding removal to a safe third country (para. 23). The fact that the United Kingdom had not submitted a declaration under article 22 of the Convention meant that asylum seekers in the United Kingdom could not appeal to the Committee against Torture. Such a declaration would be welcomed by the Committee.

42. Did the figure of 1.5 per cent (para. 99) refer only to persons seeking asylum or to asylum seekers together with all those who had been granted asylum? The Committee had received alternative information that, in fact, 50 per cent of all asylum seekers were detained. While the report stated that asylum seekers were held only with unconvicted prisoners, the Committee did not believe that prisons were an appropriate place to hold persons who were not suspected of any crime. Furthermore, prison was certainly not the appropriate place for minors seeking asylum, as they were frequently in need of specialized care. Fortunately, it seemed that asylum seekers were not detained for long periods in police stations.

43. In regard to article 10 of the Convention (paras. 35-44), he welcomed the activities undertaken in connection with the training of police officers, prison officers, prison medical staff, immigration staff and the retraining of police officers in Northern Ireland. The new two-year Diploma in Prison Medicine (para. 41) was a highly significant innovation. Was the subject of the prohibition of torture a compulsory component of the undergraduate curriculum for doctors, nurses and other medical staff, as required, among other things, under article 10 of the Convention?

44. Since the information provided on article 11 was exceptionally thorough, the only question related to the follow-up inspection on the subject of race relations (para. 63). Would the findings be included in the fourth periodic report or would they be available earlier? The number of deaths in police custody (paras. 64-68) was not critical, although the use of such self-defence and restraint procedures as neck holds and leg locks in the prone position should be discouraged since they were potentially very dangerous. The Committee had previously stated its view that plastic baton rounds (paras. 70, 71) were extremely dangerous, and was concerned at the increase in their use in 1997. The remarkable improvements made in the prison services (paras. 72-98) were most impressive. In regard to the possible inhuman or degrading treatment of the six prisoners being held in Special Secure Units (para. 76), it would be of interest to know how many hours they spent alone in their cells. Again, paragraph 86 revealed a 25 per cent increase in the average daily prison population in England and Wales between 1994-1997, reflecting the increase in the number of trials during that period. With a generally-quoted 90 per cent rate of recidivism, that would make roughly a 22 per cent increase in the number of potential criminals. It was widely held that imprisonment did not solve problems of law and order. Did the new Government share the former Government's view regarding the desirability of a more severe and austere prison regime?

45. In regard to articles 12 and 13 (paras. 110-127), the United Kingdom had one of the world's most perfect systems of police inspection, and he endorsed the Chairman's earlier remarks in that connection. He welcomed the United Kingdom's substantial contribution to the United Nations Voluntary Fund for Victims of Torture but noted that a larger contribution had been made to the Medical Foundation for the Care of Victims of Torture. As to article 16 (paras. 131-136), the Committee looked forward to the Government's clarification of the law to make sure that corporal punishment was not used to inflict degrading or harmful punishment on children (para. 131). In addition, the care of young prisoners was certainly a matter of the utmost concern.

46. In the matter of Mr. Pinochet, pursuant to article 6 of the Convention, the United Kingdom authorities should merely have taken "legal measures to ensure [Mr. Pinochet's] presence". As for the examination of available information, when Chile's report had first been considered by the Committee, the delegation had estimated that some 100,000 persons had been tortured, which would appear to be sufficient reason to "ensure Mr. Pinochet's presence".

47. Mr. CAMARA said that he had never before seen such a large number cited for deaths in police custody (paras. 64-68), which he considered to be a cause of grave concern, and asked whether the report mentioned in paragraph 113 was available. In view of the terms of article 12 of the Convention, since a death in police custody immediately aroused suspicions of torture or ill-treatment, were the competent authorities sufficiently prompt in carrying out an investigation?

48. While domestic legislation did not appear to permit the authorities to grant the request to extradite Mr. Pinochet, did the United Kingdom consider that it had complied with article 27 of the Vienna Convention on the Law of Treaties, for it had failed to apply the Convention against Torture in the

Pinochet case and had made no reference to the Convention in its decision? An explanation about the way in which the authorities considered they complied with their commitments under the Vienna Convention and, by extension, under the Convention against Torture, would be welcome.

49. Mr. EL MASRY inquired why the investigation into the killing of a Mr. O'Neill during a police raid in London was being conducted by the same police body as had been engaged in the incident. Reports of various other extrajudicial killings had come to the Committee's attention. If he understood correctly, a House of Commons committee had recommended that the investigative system should be reformed to make it more independent, rapid and effective. It would be useful to know how the existing system functioned and what the nature of the proposed reforms was. As to the figures cited in paragraph 64 of the report for the deaths or suicides in police custody, what was the persons' ethnic background and in particular had they belonged to African and Asian ethnic minorities?

50. Available information indicated that dangerous terrorist elements were making use of loopholes in United Kingdom laws to carry out acts of terrorism in other countries and that the Government was making efforts to close up those loopholes. Did the Human Rights Act, and in particular those provisions which contained restrictions on the political activities of aliens, address that matter?

51. Mr. ZUPANČIČ commended the United Kingdom on a comprehensive report. Read together with the first and second periodic reports, it provided an excellent basis for discussion. He had two legal issues to raise. First, the initial report (CAT/C/9/Add.6), paragraphs 29 to 32, provided a definition of the crime of torture, and reference was made to that definition in the third periodic report. The Committee always emphasized the need for States to incorporate in their domestic legal systems the definition of torture contained in article 1 of the Convention. The question must be asked whether the provisions of the criminal law cited in those paragraphs indeed covered all the elements of torture set out in article 1. Mr. El Masry had alluded to the presence of discrimination in cases of abuse. Criminal law regarding torture rarely expressed the principle contained in the phrase, "for any reason based on discrimination of any kind", an essential component of article 1. It would be useful to know which provisions of United Kingdom criminal law addressed each of the distinct elements of the definition contained in that essential article. Paragraph 31 of the initial report discussed criminal provisions concerning the offence of conspiracy to torture. Did the legal definition of that offence cover consent or acquiescence in the commission of torture - an important facet of the definition provided in article 1 - or did it require a more active role?

52. Second, excluding tainted evidence was known to be the best means of preventing mistreatment by the police. If he recalled correctly, in 1979 a royal commission had considered whether to adopt a rigorous exclusionary rule, but it had chosen not to do so. None of the reports clearly specified to what extent tainted evidence could or could not be used in a criminal trial. Did provisions governing the exclusion of evidence cover only confessions obtained by torture, or did they also include other information so obtained? The failure to prohibit the use of tainted evidence in criminal trials was a

violation of the right to protection against self-incrimination and, in his view, subverted the legitimacy of the criminal process. If tainted evidence reached the ears of the jury, was that reason to declare a mistrial? Finally, did rules governing the exclusion of evidence also affect administrative, immigration, and civil proceedings?

53. Mr. YU Mengjia inquired, first, what measures, if any, had been taken to reduce the rate of recidivism, in particular among younger prisoners. Second, the Committee on the Administration of Justice (CAJ), in its comments on the third periodic report, had reported that out of the approximately 5,500 complaints lodged against the police, only one had been substantiated. The delegation should explain those astonishing figures, which did not tally with information provided by the Government.

54. Mr. YAKOVLEV requested the United Kingdom to provide the Committee with the results both of the follow-up to the inspection of the police community and race relations, discussed in paragraph 63 of the report, and of the inquiry into deaths in police custody, discussed in paragraph 113.

55. Mr. SILVA HENRIQUES GASPAR asked what the powers of the Director of Public Prosecutions were. It would be useful to know, in particular, on the basis of what criteria he determined whether the evidence gathered during a preliminary investigation was sufficient to require a criminal prosecution to be undertaken.

56. The CHAIRMAN invited the delegation of the United Kingdom to answer the questions raised by the members of the Committee at the next meeting.

57. The delegation of the United Kingdom withdrew.

The public part of the meeting rose at 12.25 p.m.